

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-169

September 25, 2002

MAINE PUBLIC UTILITIES COMMISSION
Inquiry Regarding the Continued Availability of
Standard Offer Service

ORDER REGARDING
RETAIL MARKET
INFORMATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We order Central Maine Power Company, Bangor Hydro-Electric Company and Maine Public Service Company (the T&D utilities) to file quarterly reports with the Commission that provide the following data: for each month of the quarter, the number of customers served by and the total number of kWh sold by each competitive electricity provider (CEP) in each standard offer class in its service territory. The requested data does not include customers who are served on the standard offer.

II. BACKGROUND

During its last session, the Legislature directed the Commission to conduct an investigation to determine whether standard offer service “is necessary and in the public interest” and should remain available after March 1, 2005. We must consider whether fundamental changes should be made to standard offer service and are directed to report the results of our investigation and make recommendations to the Legislature by December 1, 2002. P.L. 2001, c. 528 *amending* 35-A M.R.S.A. § 3212 (4).

We opened this docket to conduct the standard offer investigation. We solicited written comments from interested parties on various issues including those specifically raised in the recent legislation. We also held a conference to discuss the written responses to our request for comments. The final report to the Legislature will be submitted by December 1, 2002.

In performing our investigation, we have noted that little information is available or compiled about the retail electricity market in Maine. As retail CEP service is the only alternative to standard offer, it is difficult to analyze the future structure of standard offer service and make recommendations to the Legislature without knowledge of the current state of the competitive electricity retail market in Maine and how the nature of the market changes over time. Moreover, the Legislature has charged the Commission with implementing the Restructuring Act; this responsibility includes oversight of the development of Maine’s retail market. Although market oversight is carried out at the wholesale level by ISO-NE and includes systematic monitoring of participant market share, there is currently no such oversight of Maine’s retail market. Accordingly, on July 18, 2002, we requested additional comments from interested parties on whether the Commission should more actively and routinely monitor and acquire information on the

operation of Maine's retail market. Central Maine Power Company (CMP), Maine Public Service (MPS), Competitive Energy Services (CES), the Public Advocate, Sprague Energy Corporation (Sprague), and Bangor Hydro-Electric Company (BHE) filed comments.

III. DECISION

Many of the commenters expressed concern that retail market oversight would constitute, or at least be perceived to constitute, a regulatory burden that would negatively affect the development of Maine's retail market. CMP added that the retail market should not require the type of oversight that ISO-NE performs of the wholesale market, because the retail market does not include the bidding aspects of the wholesale market. CMP and CES also point out that other agencies already have jurisdiction to protect against some market abuses by enforcement of antitrust and consumer protection statutes.

Many commenters maintain that the Commission already receives market information that should allow it to adequately evaluate the effectiveness of the retail market in Maine. CMP provides data monthly regarding the breakdown of load by customer class served by standard offer service and competitive electricity providers (CEPs). Chapter 305 of our Rules requires CEPs to file annual reports that contain information on average prices for each rate class, revenue data, and information regarding customer complaints, enforcement actions, changes in ownership, among other items. Chapter 305 (2)(D)(1).

Sprague recommended that the Commission compile additional data on the market share of suppliers to assess whether effective competition exists. Specifically, Sprague stated that we should gather the following data from the utility:

The number of suppliers that are serving load in each utility, the numbers of customers and the level of load that each supplier serves should be monitored for the purposes of determining the level of competitiveness in the market. Also the number of customer additions and drops per supplier from one period to the next should be monitored.

The Public Advocate also stated that the Commission should be able to fulfill its market oversight requirements by acquiring this type of information.

We concur with Sprague's suggestions. While we are sensitive to the concerns raised by some of the commenters, the data needed to effectively monitor Maine's retail market will create no increased regulatory burden for CEPs and only a minimal one for the T&D utilities. Most importantly, we cannot make informed recommendations about changes to standard offer service either in the current report or in the future without knowledge of the current strength of Maine's retail market. We conclude that we need

more extensive and more frequent data on retail service to carry out our duties, both to report back to the Legislature by December 1, 2002 and in continuing to implement restructuring in the future. Specifically, we need to be able to assess the status of the retail market, in terms of the number of CEPs actually serving customers at retail, and the market share for each of those suppliers (both in terms of the number of customers and kWh sold). Given the volatility experienced in the wholesale market, the market share information should be provided by month.

CMP suggests that if the Commission decides to obtain such market data, that we do so from the CEPs rather than the T&D utilities. Both CMP and MPS express concern about the Standard Competitive Electricity Provider Service Agreement which requires such CEP business information be treated as confidential by T&D utilities. Sprague also urges that the market share data not identify the CEPs.

We decide to obtain the data from T&D utilities rather than the CEPs because it is more efficient and will ensure that the data is in a consistent form. The T&D utilities already have data by virtue of their role in the enrollment and settlement processes.

The data provided by the utilities will be treated as confidential business information because, as suggested by commenters, individual supplier market share data is generally considered sensitive information in the electricity industry. From our conduct of the standard offer bid process we are aware that suppliers are extremely concerned about business information becoming available to competitors; even to the extent that suppliers do not want it known that they were bidders in the process. Information on the number of retail customers and the magnitude of the total retail sales of individual supplier qualifies as business information that suppliers reasonably expect to be treated as confidential. Accordingly, this Order will serve as a Protective Order and the quarterly reports will be treated as Designated Confidential Information.

Accordingly, we

O R D E R

1. That Central Maine Power Company, Bangor Hydro-Electric Company and Maine Public Service Company (T&D utilities) file quarterly reports that contain the following information, broken down by month and by standard offer class, for each non-standard offer CEP:

- Total kWh sales by standard offer class
- Number of customers enrolled as of end of the month in each standard offer class
- For large standard offer class, the month-end customer enrollment data should be subdivided into totals by the following: customers with demands less than or equal to 1 MW, customers with demands between 1 MW and 10 MW and customers with demands greater than 10 MW

2. That the T&D utilities should file the report with the data for the second quarter of 2002 within 30 days of this Order;

3. That the third quarter, 2002 and subsequent reports should be filed within 30 days after the end of the quarter;

4. That the reports are confidential business information protected from disclosure by 35-A M.R.S.A. § 61311 and § 1311-A and Rule 26 (C) of the Maine Rules of Civil Procedure;

5. That access to Designated Confidential Information shall be limited to Commission members, Commission employees and Commission consultants hired to assist the Commission in an analysis of Maine's retail market; and

6. That until further order by the Commission, all Designated Confidential Information shall be and remain confidential, and will not be disclosed for any purposes except to the persons described above.

Dated at Augusta, Maine, this 25th day of September, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

THIS DOCUMENT HAS BEEN DESIGNATED FOR PUBLICATION

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.